

STATE OF NEW JERSEY
BUREAU OF SECURITIES
P.O. Box 47029
Newark, New Jersey 07101
(201) 504-3600

IN THE MATTER OF:

:

THE EXEMPTION FROM REGISTRATION : ORDER
FOR CERTAIN BROKER-DEALERS,
INVESTMENT ADVISORS, AND :
BROKER-DEALER AGENTS USING THE :
INTERNET FOR DISSEMINATION :
OF INFORMATION :

WHEREAS, the Chief of the New Jersey Bureau of Securities ("Bureau") is charged with the administration of the Uniform Securities Law, as amended, (the "Law"), N.J.S.A. 49:3-47 et seq., and the Regulations, N.J.A.C. 13:47A-1.1 et seq., promulgated under the Law;

WHEREAS, N.J.S.A. 49:3-67(a) provides, in part, that, "[t]he bureau chief may from time to time make, amend and rescind such rules, forms, and orders as are reasonably necessary to carry out the provisions of this law...;"

WHEREAS, N.J.S.A. 49:3-56(a) states: "It shall be unlawful for any person to act as a broker-dealer, agent or investment advisor in this State unless he is registered under this act;"

WHEREAS, N.J.S.A. 49:3-56(c) states: "It shall be unlawful for any person to transact business in this State as an investment advisor unless (1) he is so registered under this act, (2) he is registered as a broker-dealer without the imposition of a condition under [N.J.S.A. 49:3-58(b)(5)]; or (3) his only clients in this State are investment companies as defined in the Investment Company Act of 1940 or insurance companies;"

WHEREAS, the Bureau Chief acknowledges that the Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, the "Internet") have facilitated greatly the ability of broker-dealers, investment advisors, and broker-dealer agents to advertise and otherwise disseminate information on products and services to prospective customers and clients;

WHEREAS, the Bureau Chief also acknowledges that certain communications made on the Internet are directed generally to anyone having access to the Internet and may be transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods (hereinafter "Internet Communications");

WHEREAS, the Bureau Chief further acknowledges that in certain instances, by distributing information on available products and services through Internet Communications available to persons in this State, broker-dealers, investment advisors, and their broker-dealer agents could be construed as "transacting business" for purposes of N.J.S.A. 49:3-56(a) and N.J.S.A. 49:3-56(c) of the Act so as to require registration in this State, since the Internet Communications would be received in this State regardless of the intent of the person originating such communication; and

WHEREAS, the Bureau Chief finds that the issuance of this Order is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act;

THEREFORE, it is on this 2nd day of September 1997
HEREBY ORDERED that:

1. Broker-dealers, investment advisors and broker-dealer agents (hereinafter "BD agents") who use the Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, hereinafter the "Internet") to distribute information on available products and services through certain communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods (hereinafter "Internet Communications") shall not be deemed to be "transacting business" in this State for purposes of N.J.S.A. 49:3-56(a) or N.J.S.A. 49:3-56(c) based solely on that fact if the following conditions are met:

(A) The Internet Communication contains a legend

in which it is clearly stated that:

- (1) the broker-dealer, investment advisor or BD agent in question may only transact business in New Jersey if first registered, excluded, or exempted from State broker-dealer, investment advisor or BD agent registration requirements, as may be; and
- (2) follow-up, individualized responses to persons in this State by such broker-dealer, investment advisor or BD agent that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with State

broker-dealer, investment advisor or BD agent registration requirements, or an applicable exemption or exclusion;

(B) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this State, said broker-dealer, investment advisor, or BD agent is first registered in this State or qualifies for an exemption or exclusion from such registration. Nothing in this paragraph shall be construed to relieve a State registered broker-dealer, investment advisor, or BD agent from any applicable securities registration requirement in this State;

(C) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in this State over the Internet, but is limited to the dissemination of general information on products and services; and

(D) In the case of a BD agent:

- (1) the affiliation with the broker-dealer of the BD agent is prominently disclosed within the Internet Communication;
- (2) the broker-dealer with whom the BD agent is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent;
- (3) the broker-dealer with whom the BD agent is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and
- (4) in disseminating information through the Internet Communication, the BD agent acts within the scope of the authority granted by the broker-dealer.

2. The position expressed in this Order extends to New Jersey broker-dealer, investment advisor, and BD agent registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions;

3. Nothing in this Order shall be construed to affect the activities of any broker-dealer, investment advisor, or BD agent engaged in business in this State that is not subject to the jurisdiction of the Bureau Chief as a result of the National Securities Markets Improvements Act of 1996, as amended; and

4. This Order shall remain in effect unless and until subsequently amended or rescinded by the Bureau Chief.

By: Franklin L. Widmann
Franklin L. Widmann
Chief, Bureau of Securities